

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3034 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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RATANBEN PRABHUBEN KALA - Petitioner(s)

Versus

SECRETARY (VIVAD) & 3 - Respondent(s)

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Appearance :

MR RAMNANDAN SINGH for Petitioner(s) : 1,
MR SATYAM CHHAYA, AGP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.
MR CHETAN P PANDYA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 26/02/2007

ORAL JUDGMENT

1. Rule. Mr.Chhaya, learned AGP waives service of

notice of Rule for respondents No.1, 2 and 3 and Mr.Chetan B. Pandya, waives service of notice of Rule for respondent No.4.

2.The petitioner has preferred the petition for challenging the order passed by the State Government dated 25.9.2006 and the petitioner has further prayed that it may be declared that the petitioner is the absolute owner of land bearing Survey Nos.67, 116, 157 situated at Village Vadva and Survey No.127 situated at Village Vasedada and also house bearing No.119 with open plot situated at Village Vadva in view of the settlement arrived at between the petitioner and respondent No.4.

3.Upon hearing Ms.Makwana for Mr.Ramanandan Singh, learned Counsel for the petitioner, Mr.Chhaya, learned AGP for the respondent authorities and Mr.Pandya, learned Counsel for the private respondent, it appears that the entry based on the "will" was mutated and the said entry was also certified. Against the said entry, appeal came to be preferred by respondent No.4 before the Assistant Collector and the Assistant

Collector, vide order dated 1.5.1999 allowed the appeal and quashed the entry No.1397 dated 19.8.1996 and directed to add the name of legal heirs and for "will" it was observed that probate may be obtained from the Civil Court. The matter was carried in revision before the District Collector by the petitioner herein and the District Collector ultimately passed the order on 22.12.1999, whereby the revision was dismissed. The petitioner further carried the matter in revision before the State Government and the said revision was also dismissed by the impugned order.

4. It is the case of the petitioner as well as respondent No.4 that the settlement is arrived at on 27.6.2006 between the petitioner and respondent No.4, whereby the right of respondent No.4, if any, is obtained and the land is to remain with the petitioner herein.

5. Ms.Makwana, learned Counsel for the petitioner and Mr.Pandya, learned Counsel for respondent No.4 confirm the said position of settlement arrived at between both the sides and they pray

that in view of the said settlement, the order passed by the Assistant Collector, its confirmation thereof by the Collector and further confirmation by the State Government be quashed.

6. As such, the respondent No.4 had invoked the jurisdiction against the entry based on the "will". It is not a case where the "will" is executed in favour of the third party, but was amongst the family members. Therefore, when there is the settlement is arrived at between the respondent No.4, who invoked the jurisdiction and the petitioner herein, without deciding the question of legality and validity of the order, if the private parties namely the petitioner and the respondent No.4 are desirous for not acting upon the order for the cancellation of the entry, the same can be entertained since it is not, in any case, a matter where the transfer by "will" is to the third party. Further, the petitioner and the respondent No.4 are as such closely related to each other. Hence, considering the peculiar

facts and circumstances, if the order of the Assistant Collector and thereafter of the Collector and the State Government, is not acted upon, no serious prejudice will be caused to the parties, who are to be affected by the order.

7. Mr. Chhaya, learned AGP submitted that if the other legal heirs have a claim in the property, the same may not be concluded or, in any case, the rights and contentions, if any, of the other legal heirs, may be kept open.

8. Even otherwise also, it is by now well settled that the entry neither confers the title, nor alters the title, if otherwise in existence, as per the provisions of Transfer of Properties Act or other relevant provisions of law, in the property. Therefore, the entry even otherwise also is neither to confer any title, nor to adversely affect the same, the legal rights of any other parties to the proceedings, who in any case, are not parties to the settlement between the petitioner and the respondent No.4, are not going to be prejudiced.

9. Under the above circumstances, I find that the

following directions shall meet with the ends of justice:-

(a) In view of the settlement arrived at between the petitioner and respondent No.4, the order passed by the Assistant Collector and its confirmation thereof by the Collector and the State Government shall not be acted upon so far as the cancellation of entry No.1397 dated 19.8.1996 is concerned.

(b) The aforesaid direction shall not invest any additional right in favour of the petitioner, nor would adversely affect the rights of any person in the property, if otherwise in existence.

(c) In view of the above, prayer for declaration of the petitioner as absolute owner of the property described in the relief clause is not granted, except observing that the entry, subject to the

aforesaid observations, shall continue in the revenue record.

10. The petition is partly allowed to the aforesaid extent only. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs. Direct service is permitted.

26.2.2007

(Jayant Patel, J.)

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